



AF/IAW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Charles D. Powell)
APPLICATION NO.: 10/696,906)
FILING DATE: October 30, 2003)
TITLE: WATERFOWL)
LURING SYSTEM)
DOCKET NO: 006394.00003)
ART UNIT: 3643)
EXAMINING ATTORNEY: Kurt C. Rowan)
CONFIRMATION NO.: 9238)

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S REPLY BRIEF (37 CFR 1.193)

This brief is in reply to the Examiner's Answer dated September, 23 2005.

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this document and any document referred to as being attached therein is being deposited with the U.S. Postal Service in an envelope as "First Class Mail" addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on November 23, 2005.


Michael E. Sellers

REMARKS

As an initial matter, Applicant would note that the Examiner's Answer appears to include a misstatement in its description of the Caccamo device. The third sentence of section 10 (Response to Argument) of the Answer states "However, Caccamo shows a waterfowl decoy with a support arm that extends from a lower support to an upper end positioned above a rotatable platform." Caccamo does not teach use of a rotatable platform as correctly recognized in the Final Office Action dated January 10, 2005.

The Answer accuses Applicant of attempting to show nonobviousness by attacking the combined references individually. In response, Applicant states that it has not attacked the references individually to any greater extent than the Examiner has relied on them individually. In determining what the combined teachings of the references would have suggested to those of ordinary skill in the art, one must necessarily consider the teachings of the individual references. Applicant has properly addressed the teachings of the individual references in order to objectively show what the combined references teach as a whole. Applicant has conducted a thorough analysis of the combined references and shown that the cited combination impermissibly changes the principle of operation of the primary reference and renders the reference inoperable for its intended purpose. MPEP §2145.III (See also, MPEP §2143.01.V "The proposed modification cannot render the prior art unsatisfactory for its intended purpose."; MPEP §2143.01.VI "The proposed modification cannot change the principle of operation of a reference.")

The Answer argues that the motivation to combine the references is "generally available to one of ordinary skill in the art" and that the level at which the decoy flies above the rotatable platform "would be a matter of design choice". The combination and its interpretation is not

based on what is taught and suggested by the references themselves. To be clear, the rejection of the claimed invention does not appear to be based on objective evidence, data or reasoning. It is well established that the fact that the claimed invention may be within the capabilities of one of ordinary skill is not sufficient by itself to establish *prima facie* obviousness. There must be some objective reason to combine the teachings of the references. MPEP §2143.01.IV The level of skill in the art cannot be relied upon to provide the suggestion to combine the references. Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999)

Reversal of the rejection of all claims is, again, respectively requested.

In the event that this reply is not timely filed and an extension of time is not requested, Applicant hereby petitions for an appropriate extension of time. The fee for this extension, along with any other fees which may be due with respect to this reply, may be charged to our deposit account No. 50-1971.

Respectfully submitted,

 11-23-05

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